

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 02-23682-CIV-MARTINEZ/MCALILEY

STEVE BROTHER,

Plaintiff,

v.

FLORIDIAN HOTEL, INC.,

Defendant.

REPORT AND RECOMMENDATION

Pending before the Court is Plaintiff's Motion for Court Enforcement of Stipulation For Settlement, and Request for Evidentiary Hearing, which asks the Court to enforce a settlement agreement entered into in 2003. [DE 10]. Defendant did not respond to the motion. A review of the record showed that Plaintiff served the motion on the counsel who represented Defendant in 2003.

It was unclear from the record whether this counsel currently represents Defendant.¹ As a result, the Court could not determine whether Defendant had received notice of the motion against it. Thus, the Court ordered Plaintiff to personally serve a copy of the motion on Defendant and file proof of service no later than November 30, 2011. [DE 14].

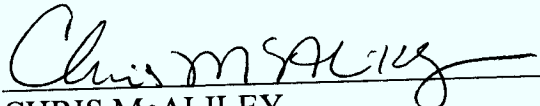
To date, Plaintiff has neither filed the required proof of service nor sought an

¹ It appears from the docket that although counsel represented Defendant in negotiating the settlement agreement, he never made a formal appearance in this action.

extension of time to do so. Based on Plaintiff's failure to comply with this Court's Order, and failure to establish service on Defendant, I recommend that the motion be denied without prejudice.

Pursuant to Magistrate Rule 4(a), Plaintiff may file written objections to this Report and Recommendation with the Honorable Jose E. Martinez **no later than 14 days from the date of this Report**. Failure to timely file objections shall bar Plaintiff from attacking on appeal any factual findings contained herein. *See RTC v. Hallmark Builders, Inc.*, 996 F.2d 1144, 1149 (11th cir. 1993); *LoConte v. Dugger*, 847 F.2d 745, 749-50 (11th Cir. 1988).

RESPECTFULLY SUBMITTED in chambers at Miami, Florida, this 8th day of December, 2011.


CHRIS McALILEY
UNITED STATES MAGISTRATE JUDGE

cc:
The Honorable Jose E. Martinez
Counsel of record